

Appl. No. 10/757,629
Atty. Docket No. 8194C
Response Dated August 25, 2006
Reply to Office Action of May 25, 2006
Customer No. 27752

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REMARKS

Claim Status

Claims 1, 4, 5, and 8-19 are pending. Claims 1, 4, 5, and 8-19 stand rejected under 35 USC § 103. No claims are amended. No claims are added.

Rejections Under 35 USC § 103(a) Over Schmidt in view of Vukos and Tritsch

Claims 1, 4, 5, 8-10 and 11-19 stand rejected under 35 USC § 103(a) as being unpatentable over Schmidt (US 3,797,495) in view of Vukos, et al. (US D422,078) and further in view of Tritsch (US 3,937,221). The Applicant does not admit that any characterization by the Office Action regarding these rejections is correct, but discusses such characterizations herein for the sake of argument. The Applicant traverses the rejections of the pending claims under 35 USC § 103 over the Schmidt, Vukos, and Tritsch references for the reasons discussed below.

Independent claims 1 and 17, as previously presented, each recite in part, a "first surface fastening element further including an effective dimension Y extending substantially parallel to a longitudinal axis of the article, the effective dimension Y increasing from a distal edge of the first fastening element to a proximal edge of the first fastening element." The Office action cited Figure 1 of the Vukos reference against the above recited portion of the Applicant's claims 1 and 17. (Office Action, page 6, lines 7-13.) The Office Action stated that "Vukos discloses disposable absorbent article to be worn about a user with a Y dimension increasing from a distal to proximal edge." (Office Action, page 6, lines 7-9.) The Office Action also included Figure 1 of the Vukos reference with lines and labels apparently added by the Examiner. (Office Action, page 7.)

From the Applicant's review, Figure 1 of the Vukos reference appears to illustrate an outside of a fastening ear, not a "fastening element" as recited in part in the Applicant's independent claims 1 and 17. As a result, the Vukos reference does not describe, teach, or suggest "a fastening element," as recited in part in the Applicant's claims 1 and 17.

Even if the fastening ear of the Vukos reference suggests the presence of a fastening element, the Vukos reference does not describe, teach, or suggest, "an effective

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dimension Y" of the fastening element, as recited in part in the Applicant's independent claims 1 and 17. In various embodiments of wearable absorbent articles, a fastening element can have a size and/or shape that differs from a size and/or shape of a fastening ear to which the fastening element is attached. For example, in the embodiment of Figure 1 in the application, fastening elements 48 are illustrated as smaller than portions of the fastening system 40 to which they are attached. (Application, Figure 1 and page 20, line 13.) As a result, the size and/or shape of the fastening ear shown in the Vukos reference does not describe, teach, or suggest "an effective dimension Y" of a fastening element, as recited in part in the Applicant's claims 1 and 17.

Even if the Vukos reference did illustrate a fastening element, such an illustration would not describe, teach, or suggest, "an effective dimension Y" of the fastening element, as recited in part in the Applicant's independent claims 1 and 17. The Federal Circuit states that "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied upon to show particular sizes if the specification is completely silent on the issue." *Hockerson-Halberstadt, Inc. v. Avia Group Int'l, Inc.*, 222 F.3d 951, 956 (Fed. Cir. 2000). From the Applicant's review, the Vukos reference is completely silent on the issue of dimensions. As a result, a mere illustration of a fastening element would not describe, teach, or suggest "an effective dimension Y" of a fastening element, as recited in part in the Applicant's claims 1 and 17.

From the Applicant's review, neither the Schmidt reference nor the Tritsch reference appear to cure the deficiencies of the Vukos reference. Thus, the Schmidt, Vukos, and Tritsch references, either independently or in combination, do not describe, teach, or suggest a "first surface fastening element further including an effective dimension Y extending substantially parallel to a longitudinal axis of the article, the effective dimension Y increasing from a distal edge of the first fastening element to a proximal edge of the first fastening element" as recited in part in the Applicant's independent claims 1 and 17. As a result, the Applicant respectfully requests reconsideration and withdrawal of the 103(a) rejections for independent claims 1 and 17 and for the pending claims which depend therefrom.

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Conclusion

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1, 4, 5, and 8-19 is respectfully requested.

Respectfully submitted,

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